



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Southwest Painting, Inc.

File: B-266222; B-266223

Date: October 17, 1995

DECISION

Southwest Painting, Inc. protests the awards of contracts to Leo's A/C, Inc. by the Department of the Navy under solicitation No. N68711-95-B-8027 and N68711-95-B-8131, respectively. Southwest contends that the awardee cannot perform the contract at the prices offered.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1988), only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective supplier whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a). Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit of relief sought by the protester, and the party's status in relation to the procurement. Black Hills Refuse Serv., 67 Comp. Gen. 261 (1988), 88-1 CPD ¶ 151. A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. ECS Composites, Inc., B-235849-2, Jan. 3, 1990, 90-1 CPD ¶ 7. With regard to solicitation -8027, Southwest is third low and since there has been no challenge to the eligibility for award of the intervening bidder who would precede the protester in eligibility under this solicitation, the protester lacks the direct economic interest required to maintain a protest.

With regard to solicitation No. -8131, we find the protester's arguments to be without merit. The submission of a below cost offer is not a valid basis to object to a contract award. An offeror, in its business judgment, properly may decide to submit a price that is extremely low. Diemaster Tool, Inc., B-238877, Apr. 5, 1990, 90-1 CPD ¶ 375. An agency decision that the contractor can perform the contract at the offered price is an affirmative determination of responsibility which we will not review absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation may have been misapplied. JWK Int'l Corp., B-237527, Feb. 21, 1990, 90-1 CPD ¶ 198. Neither exception applies here.

The protest is dismissed.

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